

Remarks

Status of the Application

The Office rejected Claims 1-16 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which application regards as the invention.

The Office rejected Claims 1-16 under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to make and/or use the invention.

The Office rejected Claims 1-16 over combinations of various art with U.S. Patent 5,817,458 to King and Hallowitz ("King").

Telephone Interview of 10/20/2004

Applicant's representatives discussed the application with the Office in a telephone interview on 10/20/2004. The Office indicated that the amendments proposed to the claims in the interview, plus an explicit statement in the record regarding the definition of "infectivity status," would cure the rejections under 35 U.S.C. 112. The Office indicated that an amendment to correct the priority claim to correct an error in the date of the provisional application originally claimed, and to include claims to other applications unintentionally omitted earlier, would obviate the art-based rejections.

Correction to the Priority Claim.

The application originally claimed the benefit of U.S. Provisional Application serial number 60/215,075, filed on June 10, 2000. However, the first sentence of the specification incorrectly cited the filing date of that provisional application as "June 10, 2001." Applicant has amended the Specification to recite the correct date. Applicant unintentionally omitted the remainder of the priority claim. Applicant has amended the Specification to include the unintentionally omitted priority claim. See 35 U.S.C. 120.

Rejections under 35 U.S.C. 112.

The Office expressed some confusion concerning exactly what the invention measured. Specifically, the Office expressed uncertainty as to the specific meaning of "assessing the infectivity status," as used in the claims. Applicant notes that the Specification defines the term to be "a description of the condition of a host with respect to the HIV virus, e.g., how many cells are actually infected with the HIV virus in comparison to the total number of cells which are capable of being infected." See Specification paragraph 5. Applicant submits that the term, used in the claims and as defined in the Specification, is definite. As agreed in the telephone interview, Applicant submits that the rejections under 35 U.S.C. 112 have been cured.

Rejections under 35 U.S.C. 103 based on *King*.

The present application now has a priority date coincident with the filing date of the *King* reference; further, the *King* reference is now part of the priority claim of the present application. Consequently, the *King* reference is not properly prior art against the present application. All of the rejections under

35 U.S.C. 103 rely on *King*. Accordingly, and as agreed in the telephone interview, Applicant urges that the rejections be withdrawn, and that the claims are patentable over the art.

Conclusion

Applicant has responded to each and every rejection and urges that the Claims as presented are in condition for allowance. Applicant requests expeditious processing to issuance.

Respectfully submitted,


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I hereby certify that this paper (along with any referred to as being attached or enclosed) is being deposited on the date shown below with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

25 Oct 2004
date

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